

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REX – REAL ESTATE EXCHANGE, INC.,

Plaintiff,

v.

ZILLOW, INC., ZILLOW GROUP, INC.,
ZILLOW HOMES, INC., ZILLOW LISTING
SERVICES, INC., ZILLOW GROUP
MARKETPLACE, INC., TRULIA, LLC, THE
NATIONAL ASSOCIATION OF REALTORS,

Defendants.

NO. 2:21-cv-00312

DECLARATION OF JACK RYAN

I, Jack Ryan, declare as follows:

1. My name is Jack Ryan, Chief Executive Officer of REX—Real Estate Exchange, Inc. (“REX”). I am over eighteen years of age and have personal knowledge of all the facts contained in this declaration.

2. I co-founded REX with Lynley Sides, REX’s Chief Operating Officer, and I have been the CEO since REX’s inception in 2015. After leaving business school and law school, I went to work at a refugee camp, Casa Juan San Diego. After Casa Juan San Diego, I went to Goldman Sachs, where I became a general partner. I left Goldman Sachs as a general partner to teach high school on the South Side of Chicago. My wife Amanda and I have committed all of our stock in

1 REX to Blaze Kids Academy, a boarding school, which Amanda and I founded, for children who
2 have lost their parents. The goal of the boarding school is to provide a caring and safe environment
3 with the best homes, educational classrooms, and athletic facilities to kids who need a break.

4 3. I had the original idea that gave birth to REX after a home purchase that I made
5 some years ago. When I bought the home, the seller's agent was on vacation. Because the seller's
6 agent was unavailable, I worked directly with the seller and agreed to all the transaction terms
7 without the services of a real estate agent. Yet, when the seller's agent returned from vacation,
8 having done no work to broker the transaction, he happily pocketed a 3% commission that has
9 long been a standard rate among NAR and MLS member real estate agents.

10 4. My experience in dramatically reducing the costs of trading other asset classes at
11 Goldman Sachs taught me that we could do the same in the residential real estate industry. I also
12 saw that when the costs of trading shares went from \$.12 to \$.01, the number of shares traded
13 increased many fold. I knew the same would happen with residential real estate and provide a
14 number of social benefits because people would find it easier to relocate through lowered real
15 estate commissions in order to take advantage of job and educational opportunities. Because
16 housing, education, and employment opportunities are so fundamental to success, I believe an
17 efficient, cost-effective real estate market is essential to reducing the wealth gap in America.

18 5. In creating REX, we committed to benefitting Americans by changing the old
19 model. Over the last five years as its CEO, I have been immersed in understanding how residential
20 real estate services are provided to consumers. I have learned how real estate brokers and agents
21 who are members of the National Association of Realtors (NAR) and local multiple listing services
22 (MLSs) traditionally cooperate in, and are compensated when, transacting homes.

23 6. As an investor in several technology start-ups and in research specific to REX's
24 founding, I learned how data and internet accessibility have combined to create efficiencies in a
25 number of commercial transactions, especially in transactions traditionally requiring one or more
26 intermediaries. More direct consumer access to products and services have driven down

1 transaction costs in a number of areas including stock trades, taxi dispatching, and travel service
2 purchases, among others.

3 7. REX was built to bring the same types of efficiencies to residential real estate
4 services. REX uses data modeling and machine learning to match sellers and buyers of homes as
5 accurately and speedily as possible on Zillow, Google, Facebook, and other channels. REX's
6 approach reduces costs for all involved. REX is able to service both the buyer and seller sides of
7 a residential real estate transaction with a total fee as low as 2% (paid by the seller), instead of the
8 5-6% agents charge all-in on average under the traditional NAR and MLS model. Our goal is to
9 reduce the fees further as we improve our technology. I expect that the commissions in a free
10 market will get to about 1%, the amount typical in other developed countries.

11 8. Unlike traditional brokers, REX licensed agents are salaried. They are incentivized
12 to put customers first rather than to just close transactions. REX's licensed agents serve sellers and
13 buyers from listing to close, and shares with them the information they need via an easy-to-use
14 internet-accessible dashboard, visits, telephone calls, or whatever the client prefers.

15 9. Another important difference in REX when compared to the MLS model, is that
16 sellers listing with REX do not make what is for all practical purposes a non-negotiable offer of
17 compensation to any buyer's agent that ultimately participates in the closing of the transaction.
18 Instead, REX believes that buyers and their agents should determine, by negotiation if necessary,
19 what fee a buyer's agent deserves and should receive, just how this works in other professions like
20 legal and banking. This also eliminates an apparent conflict of interest when agents are
21 incentivized to sell a home to their clients that makes them the most money, rather than what's
22 best for the client. REX will assist in facilitating the payment of a buyer commission by requesting
23 that buyer agents disclose their fee and that it be negotiated, adjusting the closing price of the house
24 if requested. In my experience, this often results in a buyer's agent commission well below 3%.

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1 10. REX currently maintains real estate brokerage licenses in nineteen states and thirty
2 cities, including the District of Columbia, where it services consumers who are buying and selling
3 homes. REX plans to begin operations in a twentieth state, Minnesota, soon.

4 11. Since 2015, REX has consistently experienced year-over-year growth both in terms
5 of revenue, averaging over 100% growth per year (other than the pandemic-impacted 2020, when
6 REX still saw 60% growth), and in number of transactions, from 4 in 2015, to over 1,400 in 2020.

7 12. REX maintains data concerning the amount of commissions clients pay to REX as
8 well as any commissions paid to a counterparty's agent (assuming they are represented by an
9 agent). Total commissions paid on REX facilitated home sales average 3.3% of a home's selling
10 price.

11 13. Based upon the data REX maintains, we calculated estimated commission savings
12 REX's model generated for consumers from REX's inception through today. REX calculated
13 savings based on total commissions actually paid on REX transactions versus what they would
14 have been if a typical 5.5% commission had been paid. According to this calculation REX has
15 saved consumers \$28.7 million in real estate brokerage commissions, in just five years of
16 operations. Our sellers save, on average, \$11,715 per transaction.

17 14. Based upon the growth we projected for REX, and absent any disruptions caused
18 by Zillow's cooperation with MLSs and NAR, in four years' time, we expect REX to save
19 consumers \$100 million annually in real estate commissions.

20 15. REX has received tremendously positive feedback from its clients. Some
21 statements from our clients include: "Rex was one of the best decisions we have ever made for
22 buying and selling our home. Their innovative approach to real estate allowed us to sell our house
23 within days of putting it on the market. Their agents were quick to meet our needs and always
24 willing to go the extra mile. The best part was... we got to keep more of our own money on our
25 sale." "The main reason we listed with REX was for the 2% commission, not the 5% most agents
26

1 charge to sell your house. This saved us \$26,000 with absolutely no downside to the quality of
2 service we received.”

3 16. REX is able to deliver a convenient, economical, full-service model because REX
4 uses open internet channels to market REX-listed homes directly to buyers.

5 17. REX’s model would not have been possible before the internet became widely
6 adopted.

7 18. Zillow.com and Trulia.com, both now owned by Zillow, are two internet sites that
8 grew into the two of the most visited aggregator sites for residential home listings on the internet
9 (the first and fourth, respectively). Real estate aggregator sites generally gather all home listings
10 available to them so that consumers can search for and view all available homes that meet the
11 criteria defined by the consumer’s search parameters in one click.

12 19. REX listings’ inclusion on Zillow’s sites has been critical to REX’s ability to reach
13 consumers directly.

14 20. Many other sites, particularly Realtor.com, which is the second most visited
15 residential home listing site, have been foreclosed to REX from the outset because they are
16 controlled by NAR or MLSs and closed to REX listings. NAR is the trade group of brokers that
17 governs the terms of competition among its members.

18 21. I learned in December 2020 that Zillow intended to change its website format to
19 somehow display REX listings differently than MLS listings. I first heard about the Zillow change
20 from others at REX who expressed concern to me that it would have a significant negative impact
21 upon REX’s business.

22 22. Given Zillow’s importance to REX and real estate agents generally, given Zillow’s
23 75% market share of mobile-only visitors to real estate sites (according to its 2018 10-K), I was
24 also immediately concerned and wanted to understand specifically what changes Zillow intended
25 to make. Zillow. Zillow’s longtime model of having all listings displayed together was working
26 well—and it was important to REX.

1 23. Zillow is a significant feed into the REX model that is built on the innovative
2 application of technology to match buyers and sellers without the need for expensive commissions.
3 Through REX's proprietary technology, a consumer can list their home from a smartphone and
4 have the property marketed through targeted digital ads to potential buyers using ad-based
5 algorithms.

6 24. This technology drives the savings that REX delivers to its customers by replacing
7 work that real estate agents used to do in the pre-internet era. It also drives customer satisfaction
8 because REX licensed, salaried agents are equipped with the latest machine-learning technology
9 and data-modeling to most effectively serve the customer.

10 25. As Zillow began implementing and revealing changes on its websites, I saw for the
11 first time how significantly it would disadvantage REX and our innovative model. Now when a
12 consumer searches for homes on Zillow.com and Trulia.com, rather than all listings meeting the
13 search criteria being displayed, as had been the case since REX began operations, only MLS
14 listings were returned. A consumer had to see a second tab, "Other listings," to the right of the
15 tab, "Agent listings." REX's listings were contained under the "Other listings" tab.

16 26. My experience with internet functionality as a technology investor made me believe
17 that the default return of only MLS listings combined with the placement of the "Other listings"
18 tab to the right, would severely impact views of REX's listings. It is almost a tautology in terms
19 of how consumers use the internet that a tab to the right of the first tab, is much less likely to be
20 clicked.

21 27. Unsurprisingly, I have now seen a number of REX internal analytics showing just
22 that. Views of REX's listings on Zillow's websites and related listing activity such as showings,
23 attributable to Zillow websites, have dramatically decreased.

24 28. In addition, when I view the Zillow display now, the inclusion of REX listings
25 under "Other listings" tab, juxtaposed against the "Agent listings" tab, seems to falsely indicate
26 that REX listings are not represented by a licensed agent. All of REX's listings are represented by

1 a licensed agent. If there is an “agent listing” tab and an “other listing” tab, there is no other
2 reasonable conclusion than these “other” homes are not represented by a licensed agent.

3 29. Making it far worse, REX listings are now intermingled with “for sale by owner”
4 and other listings that are unrepresented by a licensed agent, along with foreclosures. Transacting
5 in unrepresented listings is a different experience for buyers that requires more involvement by
6 buyers or their agents and thus are considered less attractive in the industry. Foreclosures generally
7 have more exposure to title-risk, liens, and poor physical conditions from financial distress. The
8 false and deceptive implication that REX listings are not represented by a licensed agent and lists
9 homes of inferior quality, impairs REX’s ability to compete and transact on equal terms.

10 30. The harm to REX is significant, though difficult to precisely quantify. I have
11 reviewed internal reports of widespread REX seller-client concerns after Zillow implemented its
12 changes. Some clients have had trouble finding their homes listed on Zillow since the change.
13 Others have expressed concern that the placement of their homes under the “Other listings” tab
14 will decrease the visibility of their homes. Some clients have personally reviewed and seen the
15 activity measures that indicate decreased views on their homes. Other clients have requested that
16 their homes now be co-listed with an MLS agent to increase the visibility of their homes. Still
17 others have canceled their listings with REX.

18 31. The displacement of REX listings into “Other listings” and growing client
19 dissatisfaction not only hurts REX and its clients in the short-term, but also impacts REX’s
20 reputation. It is widely known, studied, and accepted in the industry that word-of-mouth referrals
21 are the most frequent source of client leads for agents. If a client is for some reason dissatisfied
22 with REX, they are of course less likely to refer REX to a friend or family member. Based upon
23 REX’s internal tracking that I have reviewed, since 2019, word-of-mouth referrals have brought
24 in almost 2,000 leads to REX. This reputational loss will only be apparent over the long term.

25 32. Further, every time REX co-lists a property with an MLS agent because of the
26 Zillow change, it not only degrades REX’s apparent ability to independently consummate a

1 transaction through its proprietary technology without MLS help, but it also costs REX money to
2 pay for the co-listing. When REX loses a client because of the Zillow change, it again degrades
3 REX's reputation and REX loses a potential fee. We also do not know how many buyers and
4 sellers would have used REX, but have not done so because of the deceptive and false change.

5 33. If REX is forced to consistently co-list with the MLS, its model will be
6 compromised and rendered entirely ineffective as a competitive alternative to the traditional
7 model. REX's brand will suffer the same harm because it will lose any distinction associated with
8 its innovative model.

9 34. REX's ability to compete is being harmed directly by Zillow's compliance with
10 NAR and MLS rules that preference their listings, and obscure REX's, on the most visited
11 residential real estate aggregator sites.

12 35. Other innovative new companies in this space will be deterred from competing
13 against the NAR/MLS cartel if REX is forced to join the cartel in order to participate in the
14 residential real estate business. It hurts competition, cements the NAR/MLS's inflated rate
15 structure, and all the consumer benefits of these new models will be foregone.

16 36. Slowing the growth of REX will also slow our ability to accomplish our social
17 missions for a group who desperately need our help.

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19 I declare under the penalty of perjury under the laws of the United States of America that the
20 foregoing is true and correct.

21 EXECUTED this 8 day of March 2021, in Austin, TX.

22
23
24 Jack Ryan
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CERTIFICATE OF SERVICE

I certify that on March 9, 2021, I electronically filed the foregoing document with the Clerk of the Court via CM/ECF which will notify all parties in this matter who are registered with the Court's CM/ECF filing system of such filing. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 9th day of March, 2021.

s/Michelle Stark
Michelle Stark